



February 16, 1999

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
314 W. 11th, Suite 300
Austin, Texas 78767

OR99-0452

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122019.

The County of Travis received a request from David Lee Rodriguez for information related to case number 9605. You indicate that most of this information has been released to the requestor but seek to withhold a portion of the responsive information, contending that it is excepted from public disclosure by section 552.101 of the Government Code. You have submitted the information you seek to withhold. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08 the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, governs the release of medical records; it provides in relevant part:

Sec. 5.08. Physician-patient communication.

- (a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.
- (b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

...

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only to the following:

...

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

...

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incapacitated to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by Subtitle C, Title 7, Health and Safety Code; Subtitle D, Title 7, Health and Safety Code; Chapter XIII, Texas Probate Code; and Chapter 11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

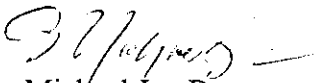
V.T.C.S. art. 4495b, § 5.08. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical

records and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). We note that the individual requesting this information is the "patient" subject of these records. Release of this information to this individual is therefore contingent on receipt by the department of a written consent to release, signed by this individual and otherwise comporting to the requirements of section 5.08(j) of this statute.

You contend that an item of correspondence, previously sent to this requestor, is made confidential by 42 U.S.C. § 602(a)(9). We note that section 602 of Chapter 42 of the United States Code delineates the requirements of state plans required to maintain federal funding eligibility for aid to families with dependent children programs. It is inapplicable to the subject information. Further, we are aware of no statute that prohibits the release of this information to this requestor. We conclude that this item of information must be released to this requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 121973

Enclosures: Submitted documents

cc: Mr. Terry L. Moseley
6912 Onion Crossing Drive
Austin, Texas 78744
(w/o enclosures)